

REMARKS/ARGUMENT

Applicant respectfully traverses the restriction requirement set forth in the Office communication dated April 10, 2009. The MPEP clearly and unequivocally states that there are two criteria which **MUST** be met for a requirement for restriction to be proper: (1) the inventions must be independent or distinct as claimed; AND (2) **there must be a serious burden on the examiner if restriction is not required (MPEP § 803)**. MPEP § 803 specifically states:

If the search and examination of all the claims in an application can be made without serious burden, the **examiner must examine them on the merits, even though they include claims to independent or distinct inventions.**

In the Office Action dated January 12, 2007, Examiner fully examined Claims 1-22. Examiner set forth the following determinations:

Claims 1-22 were rejected under 35 U.S.C. 102(e) as being anticipated by Geiger et al. (US Pat. No.: 6,463,534).

New dependent claims 23-31 were added by Applicant in a RESPONSE UNDER 37 CFR 1.111 on July 11, 2007.

In the Office Action dated October 3, 2007, Examiner again fully examined Claims 1-22 and examined new dependent Claims 23-31. Examiner set forth the following determinations:

Claims 1-22 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al. (US Pat. No.: 6,463,534) and further in view of Drews (US 6,647,494);

Claims 23-27 and 29-31 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant submitted an AMENDMENT AFTER FINAL UNDER 37 CFR 1.116 on January 3, 2008, in which Applicant proposed adding an "a" to dependent Claim 23 and proposed changing "features" to "components" in dependent Claim 28.

In an Office communication dated January 24, 2008, Examiner refused to enter the above-identified amendment for the reason, "does NOT place the application in condition for allowance". Examiner, however, never addressed whether or not the amendment placed the application in better form for appeal, which it certainly did. In any event, in the last line of Continuation 11, on page 2, Examiner states: "The examiner indicated allowable subject matters in the previous office action".

Applicant submitted an AMENDMENT UNDER 37 CFR 1.114 on March 3, 2008 in response. Applicant amended Claims 1, 5, 6, 12, 16, 17, 23, 25 and 26-31 and canceled Claims 4, 9, 15 and 20.

In the Office Action dated April 14, 2008, Examiner again fully examined Claims 1-3, 5-8, 10-14, 16-19 and 21-31. Examiner set forth the following determinations:

Claims 1, 6, 12 and 17 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention;

Claims 1-3, 5-8, 10-14, 16-22 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al. (US Pat. No.: 6,463,534) and further in view of Drews (US 6,647,494) and in further view of Ylonen et al. (US 7,302,487);

Claims 23-27 and 29-31 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant submitted an AMENDMENT UNDER 37 CFR 1.114 on July 24, 2008 in response. Applicant amended Claims 1, 5, 6, 8, 12, 17, 23 and 25-27.

In the Office Action dated October 20, 2008, Examiner again fully examined Claims 1-3, 5-8, 10-14, 16-19 and 21-31. Examiner set forth the following determinations:

Claims 1-3, 5-8, 10-14, 16-22 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al. (US Pat. No.: 6,463,534) and further in view of Drews (US 6,647,494) and in further view of Ylonen et al. (US 7,302,487);

Claims 23-27 and 29-31 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant submitted an AMENDMENT AFTER FINAL UNDER 37 CFR 1.116 on January 31, 2009 in response. Applicant amended "reset/boot" to instead be "reset or boot" in Claims 14 and 19.

In an Office communication dated February 19, 2009, Examiner entered the above-identified amendment, indicating that the objections were overcome, but Examiner maintained his previous argument that the amendment "does NOT place the application in condition for allowance".

Applicant submitted an AMENDMENT – 37 CFR 1.116 on March 4, 2009 in response. Applicant amended Claims 1, 6, 12, 17, 23 and 25-31. The amendment placed objected to claims 23-27& 29-31 in condition for allowance.

In an Office communication dated March 16, 2009, Examiner refused to enter the above-identified amendment for the reason, "does NOT place the application in condition for allowance". Examiner, however, never addressed whether or not the amendment placed the application in better form for appeal, which it certainly did. Moreover, Examiner once again admitted that he examined all of the claims: "The examiner fully considered the applicant's remark and amendment filed on March 4, 2009 in response to the prior Advice Action Office correspondence mailed on February 19, 2009. However, the proposed applicant's amendment changes the scope for the claims and raises new issues that would require further search and/or consideration" (Office communication, page 2).

Applicant submitted an RCE request on March 19, 2009 in response, requesting that the Amendment filed after Final dated 03/04/2009.

In an Office communication dated April 10, 2009, Examiner now issues an 8-way restriction requirement on Claims 1-3, 5-8, 10-14, 16-19 and 21-31.

Being that Claims 1-3, 5-8, 10-14, 16-19 and 21-31 have already been examined, at least 8 separate times by Applicant's count, Examiner cannot not meet the second requirement of MPEP § 803 - (2) **there must be a serious burden on the examiner if restriction is not required (MPEP § 803)**, since all the claims have already been examined multiple times! As such, Examiner's pending restriction determination regarding claims 1-3, 5-8, 10-14, 16-19 and 21-31 is improper and must be withdrawn.

Add to the above the fact that Examiner found at least Claims 23-27 and 29-31 allowable over the prior art if amended to include the limitations of the base claim and any intervening claims. Applicant so amended Claims 23-27 and 29-31 in the Amendment dated August 20, 2008. Applicant notes that Examiner makes no argument whatsoever that it would be a burden for him to examine claims 1-3, 5-8, 10-14, 16-19 and 21-31. Surely

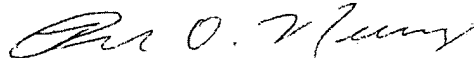
were Examiner to now make an argument that it would be a "burden" for him to now examine Claims 1-3, 5-8, 10-14, 16-19 and 21-31, after examining the claims 8 times, it would be preposterous and must be withdrawn.

In the event Examiner make his restriction requirement final, Applicant will file forthwith a PETITION FROM REQUIREMENT FOR RESTRICTION - 37 CFR § 1.143 to have this improper restriction requirement withdrawn.

Pursuant to the requirement of 35 U.S.C. 121, Applicant hereby elects invention (I) (Claims 1, 6, 12 and 17), with traverse, for the reasons set forth above.

For the reasons set forth above, Applicants respectfully request that the restriction of Claims 1-3, 5-8, 10-14, 16-19 and 21-31 be withdrawn.

Respectfully submitted,



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